IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3015 of 2007 (O&M)

Date of Decision: 30.05.2007

Rama ....Petitioner

Vs.

Kuldeep Raj ....Respondent

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Sarabjeet Khaira, Advocate,
for the petitioner.

Vinod K.Sharma,J. (Oral)

Present revision petition has been filed against the order passed by learned Additional Civil Judge (Senior Division), Gurdaspur, vide which application moved by the petitioner under section 151 of the Code of Civil Procedure seeking restoration of civil suit which was dismissed as withdrawn as compromised on 23.4.2002 by claiming that the alleged compromise in dispute be declared as null and void.

The application has been dismissed by the learned court below

by observing that the suit was withdrawn in view of the compromise entered into between the parties which was duly proved on record and the same could not be said to be the result of fraud or undue influence. It has also been observed that the present application was filed at a belated stage after three years.

Learned counsel for the petitioner contends that the learned court below was wrong in coming to the conclusion that the said application was filed after the expiry of three years. He further contends that three years were to expire in the month of April, 2005 whereas the application was moved in the month of January, 2005 and therefore, 3 years were not expired. This contention of the learned counsel cannot be accepted as the findings are based on the fact that the compromise was entered into between the parties and therefore, there could be no question of fraud or undue influence. Even otherwise, after the withdrawal of the suit it was not open to the plaintiff after expiry of almost three years to seek restoration of the same and therefore, the learned trial court was right in rejecting the application.

The learned counsel for the petitioner has placed reliance on the judgment of Kerala High Court in the case of **Ramakrishnan Vs.Thanka 2000 (1) Civil Court Cases 494 (Kerala)** to contend that the court is competent to restore the case in exercise of powers under section 151 read with Order 9 Rule 9 and Order 23 Rule 1-A of the Code. However, the judgment cited does not apply to the facts of the present case because in the said case it was the defendant who had moved application for the

restoration as in the said case application was moved by the defendant who had been transposed as plaintiff under Order 23 Rule 1-A of the Code of Civil Procedure. The plaintiff in the said suit had abandoned the suit and therefore, the defendant who was transposed as plaintiff sought to continue the suit. It was in that situation that the Hon'ble High Court of Kerala was pleased to lay down that the court was competent to restore the case so that the matter could be adjudicated inter se between the parties. However, in the present case it was the petitioner who had withdrawn the suit on the basis of compromise and thereafter kept quiet for almost three years.

There is no error in exercise of jurisdiction by the learned trial court which may call for interference by this court in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

Dismissed.

May 30,2007 **(Vinod K.Sharma)**
rp **Judge**